

House File 2066 - Introduced

HOUSE FILE 2066

BY SALMON

A BILL FOR

1 An Act relating to requirements for filters on mobile devices
2 activated in the state, providing for civil liability for
3 manufacturers of mobile devices for certain violations,
4 and including penalties and contingent effective date
5 provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 710B.1 Short title.

2 This chapter shall be known and may be cited as "*Cause of*
3 *Action to Protect Minors from Unfiltered Devices*".

4 Sec. 2. NEW SECTION. 710B.2 Definitions.

5 As used in this chapter, unless the context otherwise
6 requires:

7 1. "*Activate*" means the process of powering on a device and
8 associating it with a new user account.

9 2. "*Device*" means a tablet or a smart phone sold in this
10 state and manufactured on or after January 1 of the calendar
11 year immediately following the calendar year this chapter takes
12 effect.

13 3. "*Filter*" means software installed on a device that is
14 capable of preventing the device from accessing or displaying
15 material that is harmful to minors through the internet
16 or through any applications owned and controlled by the
17 manufacturer and installed on the device.

18 4. "*Harmful to minors*" means any description or
19 representation, in any form, of nudity, sexual conduct,
20 sexual excitement, or sadomasochistic abuse that is all of the
21 following:

22 a. Taken as a whole, appeals to the prurient interest in sex
23 of minors.

24 b. Is patently offensive to prevailing standards in the
25 adult community as a whole with respect to what is suitable
26 material for minors.

27 c. Taken as a whole, does not have serious literary,
28 artistic, political, or scientific value for minors.

29 5. "*Manufacturer*" means a person that is engaged in the
30 business of manufacturing devices and that has a registered
31 office and a registered agent that is one of the following:

32 a. An individual who resides in this state and whose
33 business office is identical with the registered office.

34 b. A domestic corporation whose business office is identical
35 with the registered office.

1 *c.* A foreign corporation authorized to transact business
2 in this state whose business office is identical with the
3 registered office. "*Manufacturer*" includes a registrant as
4 defined in section 548.101.

5 6. "*Minor*" means an individual under the age of eighteen who
6 is not emancipated, married, or a member of the armed forces of
7 the United States.

8 7. "*Smart phone*" means an electronic device that combines
9 a cell phone with a hand-held computer, typically offering
10 internet access, data storage, and text and electronic mail
11 capabilities.

12 8. "*Tablet*" means a mobile device that is equipped with a
13 mobile operating system, touchscreen display, and rechargeable
14 battery, and has the ability to support access to a cellular
15 network.

16 Sec. 3. NEW SECTION. **710B.3 Required filter.**

17 A manufacturer shall manufacture devices that when such
18 a device is activated in this state the device automatically
19 enables a filter that does all of the following:

20 1. Prevents a user of the device from accessing or
21 downloading material that is harmful to minors on any of the
22 following:

23 *a.* A mobile data network.

24 *b.* An application owned and controlled by the manufacturer
25 that is installed on the device.

26 *c.* A wired or wireless internet network.

27 2. Notifies the user of the device if the filter blocks the
28 device from downloading an application or accessing a website.

29 3. Provides a user of the device who has a passcode the
30 ability to unblock a filtered application or internet site.

31 4. Reasonably precludes a user other than a user with a
32 passcode the ability to deactivate, modify, or uninstall the
33 filter.

34 Sec. 4. NEW SECTION. **710B.4 Manufacturer liability.**

35 1. A manufacturer of a device is liable to a minor who

1 resides in the state if all of the following occur:

2 *a.* The device is activated in this state.

3 *b.* Upon activation in the state, the device does not enable
4 a filter that complies with section 710B.3.

5 *c.* Using the device, the minor accesses material that is
6 harmful to minors.

7 2. This section shall not be construed to affect any private
8 right of action existing under any other law.

9 3. Notwithstanding subsection 1, this section shall
10 not apply to a manufacturer that makes a good faith effort
11 to manufacture a device that upon activation in this state
12 automatically enables a generally accepted and commercially
13 reasonable method of filtration in accordance with this chapter
14 and applicable industry standards.

15 Sec. 5. NEW SECTION. 710B.5 Class actions.

16 A class action may be brought under this chapter in
17 accordance with the Iowa rules of civil procedure.

18 Sec. 6. NEW SECTION. 710B.6 Civil actions.

19 1. A court of competent jurisdiction that finds a
20 manufacturer liable under section 710B.4 shall enjoin the
21 manufacturer from committing further violations and may
22 order civil penalties not to exceed five thousand dollars per
23 violation, plus filing and attorney fees, in addition to any
24 other penalty established by law.

25 2. *a.* For purposes of imposing a civil penalty under
26 subsection 1, a manufacturer shall be considered to have
27 committed a separate violation for each device manufactured on
28 or after January 1 of the calendar year immediately following
29 the calendar year that this chapter takes effect that is
30 activated in the state and for which all of the following are
31 true:

32 (1) A filter pursuant to section 710B.3 is not enabled.

33 (2) A minor encounters material harmful to minors.

34 *b.* Notwithstanding paragraph “a”, the maximum civil penalty
35 imposed in a civil action brought under this section shall not

1 exceed fifty thousand dollars.

2 3. *a.* A plaintiff must prove and a court must find by clear
3 and convincing evidence that a manufacturer manufactured a
4 device, on or after January 1 of the calendar year immediately
5 following the calendar year that this chapter takes effect,
6 that was activated in this state in violation of section
7 710B.4, subsection 1.

8 *b.* A plaintiff must prove by a preponderance of the evidence
9 that a minor accessed material harmful to minors on the device
10 referenced in paragraph "*a*".

11 *c.* The court shall specify the amount of each of the
12 following for each violation for which a manufacturer is found
13 liable:

14 (1) The civil penalty.

15 (2) The court costs.

16 (3) Reasonable attorney fees.

17 *d.* In determining the civil penalty for a violation of this
18 chapter the court shall consider all of the following:

19 (1) The nature and extent of the violation.

20 (2) The severity of the violation.

21 (3) The potential economic effect of the civil penalty on
22 the manufacturer.

23 (4) The good faith measures the manufacturer took to comply
24 with this chapter.

25 (5) The willfulness of the manufacturer's misconduct.

26 (6) The deterrent effect that the imposition of the
27 civil penalty will have on both the manufacturer and other
28 manufacturers that are subject to this chapter.

29 (7) Any other factors that the court deems appropriate.

30 *e.* The attorney general may bring a civil action under this
31 chapter in the name of the people of this state.

32 *f.* A private individual may file a civil action under this
33 chapter to establish a manufacturer's liability under section
34 710B.4 after the requirements of paragraphs "*g*", "*h*", and
35 "*i*", and all of the following prerequisite requirements, are

1 satisfied:

2 (1) The individual has served on the manufacturer and the
3 attorney general's office a notice of an alleged violation of
4 section 710B.3.

5 (2) Within forty-five days after the date on which the
6 attorney general receives the notice of an alleged violation
7 under subparagraph (1), the attorney general has not provided
8 a letter to the noticing party that indicates any of the
9 following:

10 (a) An action is currently being pursued or will be pursued
11 by the attorney general regarding the alleged violation.

12 (b) The attorney general has determined that there is no
13 merit to the action.

14 (3) The manufacturer has not responded to the notice of
15 alleged violation, or returned the certification of compliance
16 served on the manufacturer pursuant to paragraph "i".

17 g. (1) The attorney for the noticing party, or the noticing
18 party if the noticing party is not represented by an attorney,
19 shall execute the notice of an alleged violation.

20 (2) The notice of an alleged violation shall do all of the
21 following:

22 (a) State that the individual executing the notice believes
23 in good faith that the manufacturer has committed a violation.

24 (b) Provide factual information sufficient to establish the
25 noticing party's basis for asserting that the manufacturer has
26 committed the alleged violation.

27 h. (1) The attorney general shall review the notice of an
28 alleged violation and may confer with the noticing party.

29 (2) The attorney general shall provide, within forty-five
30 calendar days after the date on which the attorney general
31 receives the notice of an alleged violation, a letter to the
32 noticing party and to the manufacturer that states whether the
33 attorney general finds merit in the action.

34 i. (1) An individual who serves a notice of an alleged
35 violation described in paragraph "g" shall complete and serve on

1 the manufacturer simultaneously with the notice of the alleged
2 violation, a notice of special compliance procedure and proof
3 of compliance form pursuant to paragraph "j".

4 (2) The individual may file a civil action against the
5 manufacturer, or recover from the manufacturer, if all of the
6 following requirements are satisfied:

7 (a) The notice of alleged violation alleges that the
8 manufacturer failed to manufacture a device that when activated
9 in this state automatically enabled a filter as required under
10 section 710B.3.

11 (b) A minor encountered material harmful to minors on the
12 device.

13 (c) Within sixty calendar days after the date on which the
14 manufacturer receives the notice of the alleged violation, the
15 manufacturer has failed to do all of the following:

16 (i) Correct the alleged violation and all similar
17 violations known to the manufacturer.

18 (ii) Agree to pay a penalty to the noticing party for the
19 alleged violation in the amount of ten dollars per violation,
20 up to a maximum of five hundred dollars, regardless of the
21 number of separate violations alleged in the notice. The
22 manufacturer shall deliver the penalty to the noticing
23 party within sixty calendar days after the date on which the
24 manufacturer receives notice of the alleged violation.

25 (iii) Notify the noticing party and the attorney general's
26 office in writing that the violation has been corrected. The
27 notice must be the notice of special compliance procedure and
28 proof of compliance form specified in paragraph "k".

29 j. The notice required to be provided to a manufacturer
30 pursuant to paragraph "i" shall be presented as follows:

31 Date.

32 Name of the noticing party or of the attorney for the
33 noticing party.

34 Address of the noticing party or of the attorney for the
35 noticing party.

1 Phone number of the noticing party or of the attorney for the
2 noticing party.

3 SPECIAL COMPLIANCE PROCEDURE

4 PROOF OF COMPLIANCE

5 You are receiving this form because the noticing party
6 listed above has alleged that you are in violation of Iowa Code
7 section 710B.3. The noticing party may bring legal proceedings
8 against you for the alleged violation checked below if:

9 You have not actually taken the corrective steps that you
10 certify in this form.

11 The noticing party has not received this form at the address
12 shown above, accurately completed by you, postmarked within
13 fifty calendar days of the date that you receive this notice.

14 The noticing party has not received the required ten dollar
15 penalty payment for each alleged violation, with a total
16 payment not to exceed five hundred dollars regardless of the
17 number of separate violations alleged in the notice, at the
18 address shown above and postmarked within sixty calendar days
19 of the date of that you receive this notice.

20 PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR THE
21 ATTORNEY FOR THE NOTICING PARTY

22 This notice of alleged violation is for failure to provide
23 an activated filter to protect minors against exposure to
24 materials considered harmful to minors. [Provide a complete
25 description of all alleged violations, including when and where
26 observed and the serial numbers of all devices involved.]

27 Date.

28 Name of the noticing party or of the attorney for the
29 noticing party.

30 Address of the noticing party or of the attorney for the
31 noticing party.

32 Phone number of the noticing party or of the attorney for the
33 noticing party.

34 PART 2: TO BE COMPLETED BY THE MANUFACTURER'S AUTHORIZED
35 REPRESENTATIVE

1 CERTIFICATION OF COMPLIANCE

2 Accurate completion of this form certifies that you have
3 corrected the alleged violations listed above and are now in
4 compliance with Iowa Code section 710B.3. You must complete
5 and submit the form below to the noticing party at the address
6 shown above, and mail a copy to the Iowa Attorney General's
7 Office, postmarked within fifty calendar days of the date that
8 you received this notice.

9 [Name of manufacturer] hereby agrees to pay to the noticing
10 party within sixty calendar days of the date that [name of
11 manufacturer] received this notice, a penalty of ten dollars
12 for each alleged violation and certifies that [name of
13 manufacturer] has complied with Iowa Code section 710B.3 by
14 (check one of the following):

15 ☐ Providing the noticing party shown above with
16 information about how to enable a filter on a device that did
17 not have a filter automatically enabled upon activation in the
18 state.

19 ☐ Providing the noticing party shown above with
20 information about how to exchange a device that did not have a
21 filter automatically enabled upon activation in the state for a
22 replacement device of the same model that will automatically
23 enable a filter upon activation in the state.

24 CERTIFICATION

25 All statements on this form, and on any attachments to
26 this form, are true, complete, and correct to the best of my
27 knowledge and are made in good faith. I have carefully read
28 the instructions to complete this form.

29 Signature of manufacturer's authorized representative.

30 Date.

31 Name and title of manufacturer's authorized representative.

32 k. If a lawsuit is commenced by the plaintiff, the plaintiff
33 may include additional violations in the claim if additional
34 violations are disclosed during the discovery process.

35 l. A manufacturer shall only be required to satisfy the

1 requirements applicable to the manufacturer under paragraph "k"
2 once per device.

3 *m.* (1) Notwithstanding a manufacturer's compliance with
4 paragraph "i", the attorney general may file an action under
5 paragraph "e".

6 (2) In a civil action filed under this chapter, the court
7 shall reduce the amount of any civil penalty imposed upon a
8 manufacturer for a violation of this chapter to reflect any
9 payments made by the manufacturer under paragraph "j" for the
10 same violation.

11 Sec. 7. NEW SECTION. **710B.7 Penalties.**

12 1. A civil penalty ordered by a court under this chapter
13 shall be paid by the manufacturer to the plaintiff as directed
14 by the court. The court shall provide a copy of the court order
15 to the attorney general's office.

16 2. A manufacturer shall pay a penalty paid in accordance
17 with the special compliance procedure in section 710B.6,
18 paragraph "j", directly to the noticing party.

19 3. *a.* Fifty percent of any penalty paid under this chapter
20 shall be deposited by the attorney general's office into the
21 victim compensation fund established in section 915.94. The
22 penalty amount upon which the fifty percent is calculated shall
23 not include attorney fees or costs awarded by the court.

24 *b.* Within thirty calendar days of the date of the receipt of
25 a civil penalty pursuant to subsection 1, the plaintiff shall
26 remit the amount required under paragraph "a" and a copy of the
27 court order to the attorney general's office.

28 *c.* Within thirty calendar days of the date of the receipt of
29 a penalty pursuant to subsection 2, the noticing party shall
30 remit the amount required under paragraph "a" and a copy of the
31 special compliance procedure document under section 710B.6,
32 paragraph "j", to the attorney general's office.

33 4. The attorney general's office shall maintain a log of all
34 notices of alleged violations to which the attorney general's
35 office did not respond with a letter of merit under section

1 710B.6, subsection 3, paragraph "h", subparagraph (2).

2 5. a. The attorney general's office shall maintain a
3 record of all documents and payments submitted to the attorney
4 general's office under subsection 3.

5 b. The attorney general shall annually report to the general
6 assembly in odd-numbered years, beginning the calendar year
7 following the calendar year that this chapter takes effect,
8 the following information for the immediately preceding two
9 consecutive calendar years:

10 (1) The number of court orders received by the attorney
11 general's office under subsection 1.

12 (2) The number of notices received by the attorney general's
13 office under subsection 4.

14 (3) The total dollar amount received by the attorney
15 general's office and deposited into the victim compensation
16 fund under subsection 3.

17 Sec. 8. NEW SECTION. 710B.8 Civil penalties — adjustment.

18 1. Beginning July 1 of the calendar year immediately
19 following the calendar year in which this chapter takes effect,
20 and at each subsequent five-year interval, the general assembly
21 shall adjust the dollar amount of the civil penalty provided in
22 section 710B.6 based on the change in the annual consumer price
23 index for the most recent five-year period ending on December
24 31 of the immediately preceding calendar year, and rounded to
25 the nearest five-dollar increment.

26 2. The attorney general shall publish the dollar amount of
27 the adjusted civil penalty under subsection 1, and the date
28 of the next scheduled adjustment, on the attorney general's
29 internet site.

30 Sec. 9. NEW SECTION. 710B.9 Future repeal.

31 This chapter is repealed effective January 1, 2031, if the
32 conditions to satisfy the contingent effective date do not
33 occur on or before December 31, 2030.

34 Sec. 10. CONTINGENT EFFECTIVE DATE. This Act takes effect
35 on the first day of the January immediately following the

1 date on which legislation in substantially the same form has
2 been enacted and has taken effect in at least five states in
3 addition to Iowa. The attorney general shall notify the Iowa
4 Code editor upon occurrence of this condition.

5 EXPLANATION

6 The inclusion of this explanation does not constitute agreement with
7 the explanation's substance by the members of the general assembly.

8 This bill relates to requirements for filters on mobile
9 devices activated in the state, and provides for civil
10 liability for manufacturers of mobile devices for certain
11 violations.

12 "Device" is defined in the bill as a tablet or a smart phone
13 sold in Iowa and manufactured on or after January 1 of the
14 calendar year immediately following the calendar year the bill
15 takes effect. "Filter" is defined as software installed on a
16 device that is capable of preventing the device from accessing
17 or displaying material that is harmful to minors through the
18 internet, or through any applications owned and controlled by
19 the manufacturer and installed on the device. "Manufacturer",
20 "harmful to minors", and "activate" are also defined in the
21 bill.

22 The bill requires manufacturers to manufacture devices that
23 when activated in this state automatically enable a filter
24 that performs the functions detailed in the bill. The bill
25 provides that a manufacturer of a device is liable to a minor
26 who resides in the state if the device is activated in this
27 state and upon activation does not enable a filter and the
28 minor uses the device to access material that is harmful to
29 minors. Liability does not extend to a manufacturer that
30 makes a good faith effort to manufacture a device that upon
31 activation automatically enables a generally accepted and
32 commercially reasonable method of filtration in accordance with
33 the requirements in the bill, and with applicable industry
34 standards.

35 The bill provides that a class action may be brought in

1 accordance with the Iowa rules of civil procedure. A court of
2 competent jurisdiction that finds a manufacturer liable must
3 enjoin the manufacturer from committing further violations, and
4 may order civil penalties not to exceed \$5,000 per violation,
5 plus filing fees and reasonable attorney fees, in addition to
6 any other penalty available by law. A manufacturer shall be
7 considered to have committed a separate violation for each
8 device manufactured on or after January 1 of the calendar year
9 immediately following the calendar year that the bill takes
10 effect as described in the bill. The total civil penalty
11 imposed in a civil action cannot exceed \$50,000.

12 A plaintiff must prove, and a court must find, by clear and
13 convincing evidence, that a manufacturer manufactured a device
14 in violation of the bill on or after January 1 of the calendar
15 year immediately following the calendar year that the bill
16 takes effect, and prove by a preponderance of the evidence that
17 a minor accessed material harmful to minors on such a device.
18 The court must specify the amount of the civil penalty, court
19 costs, and attorney fees for each violation for which the
20 manufacturer is found liable. In determining the civil penalty
21 for a violation of the bill, the court must consider the
22 factors as detailed in the bill.

23 The attorney general may bring a civil action in the name
24 of the people of this state, and a private individual may file
25 a civil action to establish a manufacturer's liability, after
26 satisfying prerequisite requirements, including a notice to the
27 manufacturer to which the manufacturer must respond as detailed
28 in the bill. The manufacturer's response may include a penalty
29 paid directly to the noticing party by the manufacturer.

30 If a lawsuit is commenced, the plaintiff may include
31 additional violations in the claim if additional violations
32 are disclosed during the discovery process. A civil penalty
33 ordered by a court under the bill must be paid to the plaintiff
34 as directed by the court, and the court must provide a copy
35 of the order to the office of the attorney general. Fifty

1 percent of any penalty paid must be deposited by the office of
2 the attorney general in the victim compensation fund (fund)
3 established in Code section 915.94. The penalty amount upon
4 which the 50 percent is calculated shall not include attorney
5 fees or costs awarded by the court. Within 30 calendar days
6 of the date of the receipt of a civil penalty ordered by the
7 court, the plaintiff must remit 50 percent and a copy of the
8 court order to the office of the attorney general. Within 30
9 calendar days of the date of the receipt of a penalty paid
10 directly to the noticing party by a manufacturer, the noticing
11 party must remit 50 percent and specific documentation as
12 detailed in the bill to the office of the attorney general.

13 The attorney general's office must maintain a log of all
14 notices of alleged violations to which the attorney general's
15 office did not respond with a letter of merit. The office of
16 the attorney general must maintain a record of all documents
17 and payments submitted to the office of the attorney general
18 pursuant to the provisions of the bill. The attorney general
19 shall annually report to the general assembly in odd-numbered
20 years, beginning the calendar year following the calendar year
21 that the bill takes effect, information as specified in the
22 bill for the immediately preceding two consecutive calendar
23 years.

24 Beginning July 1 of the calendar year immediately following
25 the calendar year in which the bill takes effect, and at each
26 subsequent five-year interval, the general assembly must adjust
27 the dollar amount of the civil penalty provided for in the
28 bill, based on the change in the annual consumer price index
29 for the most recent five-year period ending on December 31 of
30 the immediately preceding calendar year, and rounded to the
31 nearest \$5 increment. The attorney general shall publish the
32 dollar amount of the adjusted penalty and the date of the next
33 scheduled adjustment on the attorney general's internet site.

34 The bill takes effect on the first day of the January
35 immediately following the date on which legislation in

H.F. 2066

1 substantially the same form has been enacted and has taken
2 effect in at least five states in addition to Iowa. The
3 attorney general must notify the Iowa Code editor upon
4 occurrence of this condition. The chapter is repealed
5 effective January 1, 2031, if the conditions to satisfy the
6 contingent effective date do not occur on or before December
7 31, 2030.